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Attorneys for North Star

NO DOCKET DATE 2-14  
DOCKETED aff 3-20-06

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE

UNITED STATES OF AMERICA for the use of  
NORTH STAR TERMINAL & STEVEDORE  
COMPANY, d/b/a Northern Stevedoring &  
Handling, and NORTH STAR TERMINAL &  
STEVEDORE COMPANY, d/b/a Northern  
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of  
SHORESIDE PETROLEUM, INC., d/b/a Marathon  
Fuel Service, and SHORESIDE PETROLEUM,  
INC., d/b/a Marathon Fuel Service, on its own  
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (HRH)

NORTH STAR'S  
SECOND SET OF DISCOVERY  
REQUESTS TO  
DEFENDANT UNITED STATES  
FIDELITY & GUARANTY  
COMPANY

NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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Exhibit 1  
1 of 9

Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, Plaintiff/Use – Plaintiff North Star Terminal and Stevedore Company (hereinafter “North Star”) propounds the following discovery requests to United States Fidelity and Guaranty Company, the above-named defendant in this action, to be answered in writing within thirty (30) days of service in accordance with the above-referenced rules.

Any reference in these discovery requests to “you”, “your”, or “yourself” refers to the above-named defendant in this lawsuit including each of its agents, representatives and attorneys, and each person acting or purporting to act on the behalf of that defendant.

As used herein, the words “document” and “documents,” or the reference to any type of document or documents, shall mean the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, facsimile, email, report, record, study, handwritten note, map, drawing, working paper, chart paper, graph, index, tape, daily sheet, diary, data or processing card, computer-stored record, business record, financial record, accounting record, correspondence, or any other written, recorded, transcribed, punched, taped, electronically stored, filmed, photographed or graphic matter, however produced or reproduced, to which you have or have had access to.

As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the person in question including the above-named defendant.

As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, company, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, other business, trust estate, governmental agency, commission, bureau or department.

As used herein, the terms "identification", "identify", or "identity", when used in reference to:

(a) A natural individual: requires you to state his or her full name and residential and business addresses and telephone numbers;

(b) A corporation, company, or other business, entity or organization: requires you to state its full name and any names under which it does business, its state of formation, the address of its principal place of business, the addresses of all of its offices in Alaska, the identity of the person or persons who own, operate and/or control it, and its telephone numbers;

NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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(c) A document or thing: requires you to specifically and sufficiently describe each such item so that it may be located and/or inspected in order to confirm the existence of the item described.

The provisions of Federal Rules of Civil Procedure 26, 33 and 34 apply in all respects to these discovery requests.

INTERROGATORY NO. 6: State the date on which United States Fidelity and Guaranty Company or any of the St. Paul Insurance Companies and/or any of their employees, officers or directors first became a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of that representation including client and court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 7: State all other times, by date that United States Fidelity and Guaranty Company or any of the St. Paul Insurance Companies and/or any of their employees, officers or directors has been a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of each of those representations including client and court case name and court case number if any.

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& KURTZ  
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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
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ANSWER:

INTERROGATORY NO. 8: State the date on which United States Fidelity and Guaranty Company or any of the St. Paul Insurance Companies and/or any of their employees, officers or directors was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm , by that name or any other name, or any of its clients, and state the name and nature of that representation including client and court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 9: State all other times, by date, that United States Fidelity and Guaranty Company or any of the St. Paul Insurance Companies and/or any of their employees, officers or directors has been used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any of its clients, and state the name and nature of each of those representations including client and court case name and court case number if any.

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& KURTZ  
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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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ANSWER:

INTERROGATORY NO. 10: Describe in full detail each factual basis which supports, or tends to support, the allegations in each of the affirmative defenses stated in your Answer and Affirmative Defenses dated September 21, 2005 to North Star's Amended Complaint.

ANSWER:

INTERROGATORY NO. 11: Completely describe the subject and contents of the information relevant to this case held by each person listed on your final witness list due February 14, 2006, herein.

ANSWER:

INTERROGATORY NO. 12: Specifically state the subject matter and content of the anticipated testimony of each witness listed on your final witness list due February 14, 2006, herein.

ANSWER:

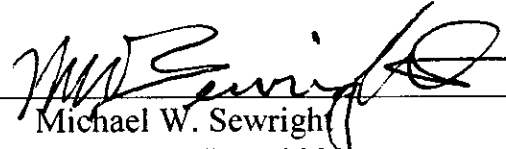
REQUEST FOR PRODUCTION NO. 11: Produce any and all unprivileged documents reflecting or otherwise relating to the information requested by Interrogatory Nos. 6 through 12 propounded above.

ANSWER:

DATED: February 14, 2006.

BURR, PEASE & KURTZ  
Attorneys for North Star

By

  
Michael W. Sewright  
Alaska Bar # 7510090

BURR, PEASE  
& KURTZ  
PROFESSIONAL CORPORATION  
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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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**OATH**

United States Fidelity and Guaranty Company, does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY

By: \_\_\_\_\_ (signature)  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_ (title)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
NOTARY PUBLIC FOR \_\_\_\_\_  
My commission expires: \_\_\_\_\_

BURR, PEASE  
& KURTZ  
PROFESSIONAL CORPORATION  
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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT USF&G

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
Page 8 of 9

45-40/#82045

Exhibit 1  
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CERTIFICATE OF SERVICE

I certify that on the 14<sup>th</sup> day of February  
2006, a copy of the foregoing was served by  
**U.S. Mail** on:

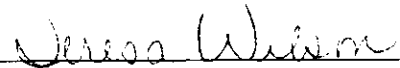
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\_\_\_\_\_  
Teresa Wilson

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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
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*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
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Fax No.: (907) 258-2530  
Attorneys for North Star

2-14  
NO DOCKET DATE \_\_\_\_\_  
DOCKETED *Welf* 3-20-06

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE**

UNITED STATES OF AMERICA for the use of  
NORTH STAR TERMINAL & STEVEDORE  
COMPANY, d/b/a Northern Stevedoring &  
Handling, and NORTH STAR TERMINAL &  
STEVEDORE COMPANY, d/b/a Northern  
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of  
SHORESIDE PETROLEUM, INC., d/b/a Marathon  
Fuel Service, and SHORESIDE PETROLEUM,  
INC., d/b/a Marathon Fuel Service, on its own  
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (HRH)

**NORTH STAR'S  
SECOND SET OF DISCOVERY  
REQUESTS TO  
DEFENDANT NUGGET  
CONSTRUCTION, INC.**

BURR, PEASE  
& KURTZ  
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(907) 276-6100

NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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Exhibit 2  
1 of 11

Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, Plaintiff/Use – Plaintiff North Star Terminal and Stevedore Company (hereinafter “North Star”) propounds the following discovery requests to Nugget Construction, Inc., the above-named defendant in this action, to be answered in writing within thirty (30) days of service in accordance with the above-referenced rules.

Any reference in these discovery requests to “you”, “your”, or “yourself” refers to the above-named defendant in this lawsuit including each of its agents, representatives and attorneys, and each person acting or purporting to act on the behalf of that defendant.

As used herein, the words “document” and “documents,” or the reference to any type of document or documents, shall mean the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, facsimile, email, report, record, study, handwritten note, map, drawing, working paper, chart paper, graph, index, tape, daily sheet, diary, data or processing card, computer-stored record, business record, financial record, accounting record, correspondence, or any other written, recorded, transcribed, punched, taped, electronically stored, filmed, photographed or graphic matter, however produced or reproduced, to which you have or have had access to.

BURR, PEASE  
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810 N STREET  
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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
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As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the person in question including the above-named defendant.

As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, company, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, other business, trust estate, governmental agency, commission, bureau or department.

As used herein, the terms "identification", "identify", or "identity", when used in reference to:

(a) A natural individual: requires you to state his or her full name and residential and business addresses and telephone numbers;

(b) A corporation, company, or other business, entity or organization: requires you to state its full name and any names under which it does business, its state of formation, the address of its principal place of business, the addresses of all of its offices in Alaska, the identity of the person or persons who own, operate and/or control it, and its telephone numbers;

(c) A document or thing: requires you to specifically and sufficiently describe each such item so that it may be located and/or inspected in order to confirm the existence of the item described.

The provisions of Federal Rules of Civil Procedure 26, 33 and 34 apply in all respects to these discovery requests.

INTERROGATORY NO. 6: State the first date on which L. D. "Randy" Randolph or LDR Engineering Services first became a client of the Oles Morrison Rinker & Baker law firm, by that name or any other name, and state the name and nature of that representation including the court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 7: State all other times, by date, Randy Randolph or LDR Engineering Services has been a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of each of those representations including the court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 8: State the date on which L. D. "Randy"

Randolph or LDR Engineering Services was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients in any matter and state the name and nature of that representation, including the court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 9: State all other times, by date, Randy Randolph

or LDR Engineering Services has been used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any of its clients in any matter and state the name and nature of each of those representations, including the court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 10: State the date on which Nugget Construction, Inc. and/or any of its employees, officers or directors first became a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of that representation including client and court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 11: State all other times, by date, Nugget Construction, Inc. and/or any of its employees, officers or directors has been a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of each of those representations including client and court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 12: State the date on which Nugget

Construction, Inc. and/or any of its employees, officers or directors was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients, and state the name and nature of that representation including client and court case name and court case number if any.

ANSWER:

INTERROGATORY NO. 13: State all other times, by date, Nugget

Construction, Inc. and/or any of its employees, officers or directors has been used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any of its clients, and state the name and nature of each of those representations including client and court case name and court case number if any.

ANSWER:



INTERROGATORY NO. 14: Describe in full detail each factual basis which supports, or tends to support, the allegations in each of the affirmative defenses stated in your Answer and Affirmative Defenses dated September 21, 2005 to North Star's Amended Complaint.

ANSWER:

INTERROGATORY NO. 15: Completely describe the subject and contents of the information relevant to this case held by each person listed on your final witness list due February 14, 2006, herein.

ANSWER:

INTERROGATORY NO. 16: Specifically state the subject matter and content of the anticipated testimony of each witness listed on your final witness list due February 14, 2006, herein.

ANSWER:

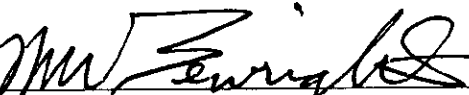
REQUEST FOR PRODUCTION NO. 11: Produce any and all unprivileged documents reflecting or otherwise relating to the information requested by Interrogatory Nos. 6 through 16 propounded above.

ANSWER:

DATED: February 14, 2006.

BURR, PEASE & KURTZ  
Attorneys for North Star

By



Michael W. Sewright  
Alaska Bar # 7510090

BURR, PEASE  
& KURTZ  
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810 N STREET  
ANCHORAGE, AK 99501  
(907) 276-6100

NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
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**OATH**

Nugget Construction, Inc., does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

NUGGET CONSTRUCTION, INC.

By: \_\_\_\_\_ (signature)

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_ (title)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
NOTARY PUBLIC FOR \_\_\_\_\_

My commission expires: \_\_\_\_\_

BURR, PEASE  
& KURTZ  
PROFESSIONAL CORPORATION  
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(907) 276-6100

NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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Exhibit 2  
10 of 11

CERTIFICATE OF SERVICE

I certify that on the 14<sup>th</sup> day of February  
2006, a copy of the foregoing was served by  
U.S. Mail on:

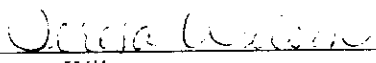
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Barokas Martin & Tomlinson  
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\_\_\_\_\_  
Teresa Wilson

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NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS  
TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)  
Page 11 of 11

45-40/#82043

Exhibit 2  
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RECEIVED

MAR 17 2006

NO DOCKET DATE *wlf*

DOCKETED

Herbert A. Viergutz, Esq.  
BAROKAS MARTIN & TOMLINSON  
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Anchorage, AK 99501  
Phone: 907-276-8010  
Fax: 907-276-5334  
Counsel for USF&G

BUBB, PEASE & KURTZ

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the use of NORTH  
STAR TERMINAL & STEVEDORE COMPANY, d/b/a  
NORTHERN STEVEDORING & HANDLING, and NORTH  
STAR TERMINAL & STEVEDORE COMPANY, d/b/a  
NORTHERN STEVEDORING & HANDLING, on its own  
behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of SHORESIDE  
PETROLEUM, INC., d/b/a MARATHON FUEL SERVICE,  
and SHORESIDE PETROLEUM, INC., d/b/a  
MARATHON FUEL SERVICE, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER ROCK  
PRODUCTS, INC.; UNITED STATES FIDELITY AND  
GUARANTY COMPANY; and ROBERT A. LAPORE,

Defendants.

No. A98-009 CIV (HRH)

**UNITED STATES FIDELITY AND GUARANTY COMPANY'S RESPONSES TO  
PLAINTIFFS NORTH STAR TERMINAL & STEVEDORE COMPANY'S SECOND SET OF  
DISCOVERY REQUESTS**

BAROKAS MARTIN & TOMLINSON  
1029 West Third, Suite 280  
Anchorage, Alaska 99501  
Phone: (907) 276-8010  
Fax: (907) 276-5334

1 Herbert A. Viergutz, Esq.  
2 BAROKAS MARTIN & TOMLINSON  
3 1029 West Third, Suite 280  
4 Anchorage, AK 99501  
5 Phone: 907-276-8010  
6 Fax: 907-276-5334  
7 Counsel for USF&G

8 COME NOW the Defendant, United States Fidelity and Guaranty Company, herein  
9 (hereinafter "USF&G"), by and through their undersigned counsel, Barokas Martin &  
10 Tomlinson, and herein responds to Plaintiff, North Star Terminal & Stevedore Company,  
11 (hereinafter "North Star"), Second Set of Discovery Requests as follows:

12 **GENERAL OBJECTIONS**

13 A. Responding Party objects to the extent that any Discovery Request seeks  
14 discovery of documents or information protected by the attorney-client privilege, the work  
15 product doctrine, or any other recognized legal privilege.

16 B. Responding Party objects to the extent that any Discovery Request (i) seeks  
17 information not reasonably calculated to lead to discovery of admissible evidence, (ii) is  
18 over broad or unduly burdensome, and/or (iii) is vague or ambiguous.

19 C. Responding Party objects to the extent that any Discovery Request calls for  
20 information that may reasonably be derived or ascertained from the parties' business  
21 records (as produced in discovery) or from an examination, audit or inspection of those  
22 records.

23 D. Responding Party objects to the extent that any Discovery Request, or its  
24 accompanying instructions, call for information or details beyond what is required under the  
25 Alaska Rules of Civil Procedure.

26 E. Responding Party objects to the extent that any Discovery Request seeks  
27 information within North Star's own possession or control.

28 F. Responding Party objects to these Discovery Requests to the extent that  
they call for a level of detail beyond the reasonable scope of Discovery and which is more  
appropriate for discovery by depositions.

1 Herbert A. Viergutz, Esq.  
2 BAROKAS MARTIN & TOMLINSON  
3 1029 West Third, Suite 280  
4 Anchorage, AK 99501  
5 Phone: 907-276-8010  
6 Fax: 907-276-5334  
7 Counsel for USF&G

8 G. The following Responses to North Star's Discovery Requests are made  
9 subject to the foregoing objections which are incorporated into each and every answer.

10 **RESPONSES TO REQUEST FOR PRODUCTION AND INTERROGATORIES**

11 **INTERROGATORY NO. 6:** State the date on which United States Fidelity and guaranty  
12 Company or any of the St. Paul Insurance Companies and/or any of their employees,  
13 officers or directors first became a client of Oles Morrison Rinker & Baker law firm, by that  
14 or any other name, and state the name and nature of that representation including client  
15 and court case name and court case name and court case number if any.

16 **RESPONSE:** Documents responsive to this Discovery Request have previously  
17 been produced. The date the firm entered an appearance would be the date that the  
18 formal representation began as regards the instant litigation.

19 **INTERROGATORY NO. 7:** State all other times, by date the United States Fidelity and  
20 Guaranty Company or any of the St. Paul Insurance Companies and/or any of their  
21 employees, officers or directors have been a client of Oles Morrison Rinker & Baker law  
22 firm, by that or any other name, and state the name and nature of each of their  
23 representations including client and court case name and court case number if any.

24 **RESPONSE:** This Interrogatory is much too broad and unduly burdensome to  
25 respond to as Defendant has no idea if any employee's, officers, or former directors have  
26 ever been clients of the firm. The firm may have previously provided representation to  
27 Answering Defendant with regard to bond claims. The claims are made under the name  
28 of the principal and it is extremely difficult to determine particular firms representing  
Answering Defendant on any specific occasions. Answering Defendant is conducting a  
search of its records in an attempt to more fully respond to this Interrogatory.

1 Herbert A. Viergutz, Esq.  
2 BAROKAS MARTIN & TOMLINSON  
3 1029 West Third, Suite 280  
4 Anchorage, AK 99501  
5 Phone: 907-276-8010  
6 Fax: 907-276-5334  
7 Counsel for USF&G

8 INTERROGATORY NO. 8: State the date on which United States Fidelity and Guaranty  
9 Company or any of the St. Paul Insurance Companies and/or any of their employees,  
10 officers or directors was first used or designated as an expert witness or consultant for the  
11 Oles Morrison Rinker & Baker law firm, by that name and nature of that representation  
12 including client and court case name and court case number if any.

13 RESPONSE: Answering Defendant does not provide consultation or expert witness  
14 services and, therefore, has never been employed by said firm in that capacity. Answering  
15 Defendant cannot possibly know if any employees, officers or former directors served as  
16 an expert witness or consultant for said firm in their individual capacity outside their  
17 employment with Answering Defendant.

18 INTERROGATORY NO. 9: State all other times, by date, that United States Fidelity and  
19 Guaranty Company or any of the St. Paul Insurance Companies and/or any of their  
20 employees, officers or directors has been used or designated as an expert witness or  
21 consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any  
22 of its clients, and state the name and nature of each of those representations including  
23 client and court case name and court case number if any.

24 RESPONSE: See Response to Interrogatory No. 8.

25 INTERROGATORY NO. 10: Describe in full detail each factual basis which supports, or  
26 tends to support, the allegations in each of the affirmative defenses stated in your Answer  
27 and Affirmative Defenses dated September 21, 2005 to North Star's Amended Complaint.

28 RESPONSE: See Response of Defendant, Nugget Construction, Inc., to a similar  
Discovery Request as Answering Defendant was also being represented by Oles Morrison  
Rinker & Baker on the date the Affirmative Defenses were forwarded on behalf of both



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6 Fax: 907-276-5334  
7 Counsel for USF&G

8 Defendants. The only independent claim forwarded by Defendants against Answering  
9 Defendants is one based on bad faith. There exists absolutely no evidence of any bad  
10 faith of Answering Defendant. Answering Defendant has no obligation to settle the  
11 litigation independent from its principal, and chose not to do so. This is not bad faith.  
12 There exists no intelligible articulated claim for bad faith against Answering Defendant  
13 outside this specific allegation. The matter will be addressed in a Summary Judgment  
14 Motion, as will the Amended Affirmative Defense of Statute of Limitations forwarded by the  
15 undersigned, as the Statute of Limitations expired on the claims asserted by Plaintiff  
16 against Defendant long before Plaintiff's Amended Complaints dated August 31, 2005.

17 INTERROGATORY NO. 11: Completely describe the subject and contents of the  
18 information relevant to this case held by each person listed on your final witness list due  
19 February 14, 2006, herein.

20 RESPONSE: See Response to Interrogatory No. 12.

21 INTERROGATORY NO. 12: Specifically state the subject matter and content of the  
22 anticipated testimony of each witness listed on your final witness list due February 14,  
23 2006, herein.

24 RESPONSE: See General Objections. This Discovery Request calls for a level of  
25 detail beyond the reasonable scope of Discovery and which is more appropriate for  
26 Discovery by depositions. This Discovery Request calls for information or details which is  
27 beyond what is required under the Alaska Rules of Civil Procedure.

28 REQUEST FOR PRODUCTION NO. 11: Produce any and all unprivileged documents  
reflecting or otherwise relating to the information requested by Interrogatory No. 6 through  
12 propounded above.

Herbert A. Viergutz, Esq.  
BAROKAS MARTIN & TOMLINSON  
1029 West Third, Suite 280  
Anchorage, AK 99501  
Phone: 907-276-8010  
Fax: 907-276-5334  
Counsel for USF&G

**RESPONSE:** Any and all documents, including those which are privileged, have previously been produced by Answering Defendant. Answering Defendant is outraged that it went through the process of waiving the privilege and providing all documents, to no avail, as Plaintiffs continue in their bad faith conduct of proceeding against Answering Defendant for a bad faith cause of action when Plaintiff's own bad faith conduct drives this instant litigation. Appropriate Motions for attorney fees will be filed.

Dated this \_\_\_\_\_ day of March, 2006.

Herbert A. Viergutz, Alaska Bar No. 8506088

**OATH**

United States Fidelity and Guaranty Company, does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

Dated this 14<sup>th</sup> day of March, 2006.

United States Fidelity and Guaranty Company


By: [Signature]  
Printed Name: JANIE S. SMITH  
Its: Bond Claims Counsel (title)

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of March, 2006.

[Signature]  
Notary Public in and for State of Maryland  
My Commission Expires: 01-01-07

Herbert A. Viergutz, Esq.  
BAROKAS MARTIN & TOMLINSON  
1029 West Third, Suite 280  
Anchorage, AK 99501  
Phone: 907-276-8010  
Fax: 907-276-5334  
Counsel for USF&G

Dated this 16 day of March, 2006.

  
Herbert A. Viergutz, Alaska Bar No. 8506088

OATH

United States Fidelity and Guaranty Company, does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

Dated this \_\_\_\_\_ day of March, 2006.

United States Fidelity and Guaranty Company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_ (title)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of March, 2006.

Notary Public in and for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above was mailed on the 16 day of March, 2006, to:

Michael W. Sewright, Esq.  
Burr, Pease & Kurtz  
810 N Street  
Anchorage, AK 99501

Steven J. Shamburek, Esq.  
Law Office of Steven J. Shamburek  
425 G Street, Suite 630  
Anchorage, AK 99501-5872

Paul Stockler, Esq.  
1309 West 16<sup>th</sup> Avenue  
Anchorage, AK 99501

Tom Krider, Esq.  
Traeger Machefanz, Esq.  
Oles Morrison Rinker & Baker, LLP  
745 4th Avenue, Suite 502  
Anchorage, AK 99501-2136

  
Herbert A. Viergutz

7

Exhibit 3  
7 of 7

1 Traeger Machetanz, Esq.  
2 Thomas R. Krider, Esq.  
3 OLES MORRISON RINKER & BAKER LLP  
4 745 Fourth Avenue, Suite 502  
5 Anchorage, Alaska 99501  
6 Telephone: 907-258-0106  
7 Facsimile: 907-277-8001

8 Attorneys for Defendant Nugget Construction, Inc.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE

UNITED STATES OF AMERICA for the use  
of NORTH STAR TERMINAL & STEVEDORE  
COMPANY, d/b/a Northern Stevedoring &  
Handling, and NORTH STAR TERMINAL &  
STEVEDORE COMPANY, d/b/a Northern  
Stevedoring & Handling, on its own  
behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use  
of SHORESIDE PETROLEUM, INC., d/b/a  
Marathon Fuel Service, and SHORESIDE  
PETROLEUM, INC., d/b/a Marathon Fuel  
Service, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER  
ROCK PRODUCTS, INC.; UNITED STATES  
FIDELITY AND GUARANTY COMPANY; and  
ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (HRH)

NUGGET'S RESPONSES TO  
NORTH STAR'S SECOND SET OF  
DISCOVERY REQUESTS TO  
DEFENDANT NUGGET  
CONSTRUCTION, INC.

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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P-TRK Responses to North Star's Second Discovery Requests 032006 993100002.doc

ORIGINAL

Exhibit 4  
1 of 17

Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, Plaintiff/Use -Plaintiff North Star Terminal and Stevedore Company (hereinafter "North Star") propounds the following discovery requests to Nugget Construction, Inc., the above-named defendant in this action, to be answered in writing within thirty (30) days of service in accordance with the above-referenced rules.

Any reference in these discovery requests to "you", "your", or "yourself" refers to the above-named defendant in this lawsuit including each of its agents, representatives and attorneys, and each person acting or purporting to act on the behalf of that defendant.

As used herein, the words "document" and "documents," or the reference to any type of document or documents, shall mean the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, facsimile, email, report, record, study, handwritten note, map, drawing, working paper, chart paper, graph, index, tape, daily sheet, diary, data or processing card, computer-stored record, business record, financial record, accounting record, correspondence, or any other

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction, et al., A98-009 CIV (HRH)*

Page 2 of 17

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P-TRK Responses to North Star's Second Discovery Requests 032006 993100002.doc

Exhibit 4  
2 of 17

1 written, recorded, transcribed, punched, taped, electronically  
2 stored, filmed, photographed or graphic matter, however  
3 produced or reproduced, to which you have or have had access  
4 to.

5 As used herein, the term "representative" means any  
6 and all agents, employees, servants, officers, directors,  
7 attorneys, or other persons acting or purporting to act on  
8 behalf of the person in question including the above-named  
9 defendant.  
10

11 As used herein, the term "person" means any natural  
12 individual in any capacity whatsoever or any entity or  
13 organization, including divisions, departments, and other units  
14 therein, and shall include, but not be limited to, a public or  
15 private corporation, company, partnership, joint venture,  
16 voluntary or unincorporated association, organization,  
17 proprietorship, other business, trust estate, governmental  
18 agency, commission, bureau or department.  
19

20 As used herein, the terms "identification",  
21 "identify", or "identity", when used in reference to:  
22  
23  
24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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P-TRK Responses to North Star's Second Discovery Requests 032006 993100002.doc

Exhibit 4  
3 of 17

1 (a) A natural individual: requires you to state his  
2 or her full name and residential and business addresses  
3 and telephone numbers;

4 (b) A corporation, company, or other business,  
5 entity or organization: requires you to state its full  
6 name and any names under which it does business, its state  
7 of formation, the address of its principal place of  
8 business, the addresses of all of its offices in Alaska,  
9 the identity of the person or persons who own, operate  
10 and/or control it, and its telephone numbers;

11 (c) A document or thing: requires you to  
12 specifically and sufficiently describe each such item so  
13 that it may be located and/or inspected in order to  
14 confirm the existence of the item described.

15 The provisions of Federal Rules of Civil Procedure  
16 26, 33 and 34 apply in all respects to these discovery  
17 requests.

18  
19  
20 GENERAL OBJECTIONS

21 1. Defendant objects to the form of Plaintiff's pleading  
22 insofar as it imposes duties beyond those required under Rules  
23 33 and 34.

24 2. Defendant objects to all instructions and definitions  
25 to the extent they enlarge upon, supersede, or in any way modify  
the rules of discovery as set forth in CR 26, CR 33 and CR 34.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO-DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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P-TRK Responses to North Star's Second Discovery Requests 032006 993100002.doc

Exhibit 4  
4 of 17

1           3. Defendant objects to Plaintiff's requests for  
2 production to the extent that they seek documents that are  
3 inadmissible and are not relevant to the subject matter of this  
4 action, or are not reasonably calculated to lead to the  
discovery of admissible evidence.

5           4. Defendant objects to Plaintiff's interrogatories and  
6 requests for production of documents to the extent that they  
impose an undue burden on the responding party.

7           5. Defendant objects to Plaintiff's interrogatories and  
8 requests for production of documents to the extent that they  
9 seek information that is protected by the attorney-client  
privilege and work product doctrine.

10          6. Defendant objects to Plaintiff's interrogatories  
11 insofar as they are directed to knowledge of persons or entities  
12 not subject to control of the responding party at the time when  
these answers were prepared.

13          7. Defendants object to Plaintiff's discovery requests to  
14 the extent they seek information not pertinent to the present  
15 litigation involving the breach of the parties' settlement  
16 agreement.

17                   INTERROGATORY NO. 6: State the first date on which L.

18 D. "Randy" Randolph or LDR Engineering Services first became a  
19 client of the Oles Morrison Rinker & Baker law firm, by that  
20 name or any other name, and state the name and nature of that  
21 representation including the court case name and court case  
22 number if any.  
23  
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25           **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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P-TRK Responses to North Star's Second Discovery Requests 032006 993100002.doc

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ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it is directed at entities that are neither a party to this litigation nor legally affiliated with Nugget. Further, this Interrogatory is duplicative, as Plaintiff has made this inquiry directly of Mr. Randolph during his second deposition.

INTERROGATORY NO. 7: State all other times, by date,

Randy Randolph or LDR Engineering Services has been a client of the Oles Morrison Rinker & Baker law firm, by that or any other name, and state the name and nature of each of those representations including the court case name and court case number if any.

ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it is directed at entities that are neither a party to this litigation nor legally affiliated with Nugget. Further, this Interrogatory is duplicative, as Plaintiff has made this inquiry directly of Mr. Randolph during his second deposition.

INTERROGATORY NO. 8: State the date on which L. D.

"Randy" Randolph or LDR Engineering Services was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients in any matter and state the name and

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction, et al., A98-009 CIV (HRH)*

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Exhibit 4  
6 of 17

1 nature of that representation, including the court case name and  
2 court case number if any.

3 ANSWER:

4 Defendant Nugget incorporates herein its General Objections.  
5 stated above. In addition, Nugget objects to this  
6 Interrogatory, as it is directed at entities that are neither a  
7 party to this litigation nor legally affiliated with Nugget.  
8 Further, this Interrogatory is duplicative, as Plaintiff has  
9 made this inquiry directly of Mr. Randolph during his second  
10 deposition.

11 INTERROGATORY NO. 9: State all other times, by date,

12 Randy Randolph or LDR Engineering Services has been used or  
13 designated as an expert witness or consultant for the Oles  
14 Morrison Rinker & Baker law firm, by that or any other name, or  
15 any of its clients in any matter and state the name and nature  
16 of each of those representations, including the court case name  
17 and court case number if any.

18 ANSWER:

19 Defendant Nugget incorporates herein its General Objections  
20 stated above. In addition, Nugget objects to this  
21 Interrogatory, as it is directed at entities that are neither a  
22 party to this litigation nor legally affiliated with Nugget.  
23 Further, this Interrogatory is duplicative, as Plaintiff has  
24 made this inquiry directly of Mr. Randolph during his second  
25 deposition.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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Exhibit 4  
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1                    INTERROGATORY NO. 10: State the date on which Nugget  
2 Construction, Inc. and/or any of its employees, officers or  
3 directors first became a client of the Oles Morrison Rinker &  
4 Baker law firm, by that or any other name, and state the name  
5 and nature of that representation including client and court  
6 case name and court case number if any.  
7

8                    ANSWER:

9 Defendant Nugget incorporates herein its General Objections  
10 stated above. In addition, Nugget objects to this  
11 Interrogatory, as it calls for attorney-client privileged  
12 information, and is duplicative, as Plaintiff has made this  
13 inquiry during its multiple 30(b)(6) depositions of Nugget.  
14 Without waiving any of its objections, Nugget refers Plaintiff  
15 to the deposition testimony for the response to this inquiry,  
16 and provides the following information:

17 The first time Nugget retained Oles Morrison was in 1996 and  
18 related to the bid protest that was filed by another bidder on  
19 the project that is at issue in the present litigation.  
20

21                    INTERROGATORY NO. 11: State all other times, by date,  
22 Nugget Construction, Inc. and/or any of its employees, officers  
23 or directors has been a client of the Oles Morrison Rinker &  
24 Baker law firm, by that or any other name, and state the name  
25 and nature of each of those representations including client and  
court case name and court case number if any.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
REQUESTS TO-DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction,  
et al., A98-009 CIV (HRH)*

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Exhibit 4  
8 of 17

ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry, and provides the following information:

The first time Nugget retained Oles Morrison was in 1996 and related to the bid protest that was filed by another bidder on the project that is at issue in the present litigation.

Oles Morrison represented Nugget in the Alaska State Court case in which Nugget brought suit against Spencer Rock Products to recover its damages on the project that is at issue in the present litigation. Case No. 3AN-97-9509 Civil.

Oles Morrison represented Nugget before the Armed Services Board of Contract Appeal (Appeal of Nugget Construction, Inc., under Contract No. DACA85-99-C-0017) with regard to a termination for convenience claim on a project for the Army on St. Lawrence Island, AK.

INTERROGATORY NO. 12: State the date on which Nugget

Construction, Inc. and/or any of its employees, officers or directors was first used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that name or any other name, or any of its clients, and state the name and nature of that representation including client and court case name and court case number if any.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO-DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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Exhibit 4  
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ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry.

INTERROGATORY NO. 13: State all other times, by date,

Nugget Construction, Inc. and/or any of its employees, officers or directors has been used or designated as an expert witness or consultant for the Oles Morrison Rinker & Baker law firm, by that or any other name, or any of its clients, and state the name and nature of each of those representations including client and court case name and court case number if any.

ANSWER:

Defendant Nugget incorporates herein its General Objections stated above. In addition, Nugget objects to this Interrogatory, as it calls for attorney-client privileged information, and is duplicative, as Plaintiff has made this inquiry during its multiple 30(b)(6) depositions of Nugget. Without waiving any of its objections, Nugget refers Plaintiff to the deposition testimony for the response to this inquiry.

INTERROGATORY NO. 14: Describe in full detail each

factual basis which supports, or tends to support, the allegations in each of the affirmative defenses stated in your

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.**

*United States ex rel. North Star, et al. v. Nugget Construction, et al.*, A98-009 CIV (HRH)

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1 Answer and Affirmative Defenses dated September 21, 2005 to  
 2 North Star's Amended Complaint.

3 ANSWER:

4 Defendant Nugget incorporates herein its General Objections  
 5 stated above. In addition, Nugget objects to this interrogatory  
 6 as it is duplicative given the extensive deposition testimony  
 taken in this matter that covers many of the inquiries made  
 herein.

7 Affirmative Defense No. 1: Plaintiff asks Nugget to provide the  
 8 facts constituting the absence of a contract between itself and  
 Plaintiff; i.e. it seeks to have Nugget prove a negative. To do  
 9 so, Nugget refers Plaintiff to the totality of the discovery  
 taken in this case, including the depositions of Nugget's and  
 10 Plaintiff's personnel. From that discovery, it is evident that  
 there was never a "meeting of the minds" between the parties  
 11 required to form a contractual relationship.

12 Affirmative Defense No. 2: The fact that Plaintiff was a  
 second-tier supplier to a material supplier was decided in the  
 13 9<sup>th</sup> Circuit decision dated September 27, 2001.

14 Affirmative Defense No. 3: With regard to Nugget and not USF&G,  
 this Affirmative Defense is withdrawn.

15 Affirmative Defense No. 4: This Affirmative Defense presents a  
 16 legal question under the Miller Act. To the extent Plaintiff's  
 claims are not covered under the Act and the cases interpreting  
 17 it, they are not recoverable under the Miller Act cause of  
 action set forth in Plaintiff's complaint (e.g. tort claims,  
 18 punitive damages, attorneys' fees, etc.).

19 Affirmative Defense No. 5: With regard to Nugget and not USF&G,  
 this Affirmative Defense is withdrawn.

20 Affirmative Defense No. 6: With regard to Nugget and not USF&G,  
 21 the Affirmative Defense relating to "unclean hands" is  
 withdrawn. As to the Defense of laches, Plaintiff's waited  
 22 seven years from the time the events on the project occurred  
 before it amended its complaint to incorporate numerous causes  
 23 of action that had not been previously brought. The statute of  
 limitations had long ago run on these claims and it is now  
 24

25 **NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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1 difficult to reconstruct all of the events surrounding the  
2 project.

3 Affirmative Defense No. 7: With regard to Nugget and not USF&G,  
4 this Affirmative Defense is withdrawn.

5 Affirmative Defense No. 8: Plaintiff's personnel have testified  
6 that it was its policy to invoice on a weekly basis for work  
7 performed and that 30 days later it would expect payment. On  
8 this project, Plaintiff continued to work in spite of the fact  
9 that it did not receive timely payment from Spencer Rock  
10 Products for the work Plaintiff had performed. By continuing to  
11 provide Spencer Rock Products services in the face of non-  
12 payment, Plaintiff failed to mitigate its damages. In addition,  
13 Plaintiff did not inform Nugget timely of Spencer Rock Product's  
14 failure to make timely payment. Once it did so and Nugget  
15 informed Plaintiff that Nugget was not responsible for  
16 Plaintiff's payments, Plaintiff ceased performing work and  
17 incurring additional expenses.

18 Affirmative Defense No. 9: See response to Affirmative Defense  
19 No. 8. In addition, Plaintiff's contract was with Spencer Rock  
20 Products. To the extent Plaintiff was owed money and not paid,  
21 the responsibility for that lays with Spencer Rock Products.  
22 This is especially true with regard to the first two barges of  
23 material loaded by Plaintiff, as Spencer Rock Products had been  
24 paid as provided for in the contract by Nugget for that effort.

25 Affirmative Defense No. 10: With regard to Nugget and not  
USF&G, this Affirmative Defense is withdrawn.

Affirmative Defense No. 11: See response to Affirmative Defense  
No. 8.

Affirmative Defense No. 12: This Affirmative Defense is on  
behalf of USF&G, and therefore, this Interrogatory must be  
addressed to it.

Affirmative Defense No. 13: See response to Affirmative Defense  
No. 12.

Affirmative Defense No. 14: To the extent Plaintiff's claims  
arise in contract, punitive damages are legally barred.

Affirmative Defense No. 15: See response to Affirmative Defense  
No. 8.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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1 Affirmative Defense No. 16: Plaintiff's contract was with  
 2 Spencer Rock Products, not Nugget. As such, Spencer Rock  
 3 Products is responsible for making payment to Plaintiff for any  
 4 work performed. Spencer Rock Products was paid \$147,000 by  
 5 Nugget for the first two loads of rock, which funds Spencer Rock  
 6 Product refused to use to pay its suppliers. To avoid having to  
 7 pay its suppliers, Spencer Rock Products intentionally mislead  
 8 those suppliers by telling them that it had received no money  
 9 from Nugget. Spencer Rock Products also failed to inform its  
 10 suppliers that its entitlement to further payment from Nugget  
 11 would likely be reduced because of Spencer Rock Product's  
 12 inability to produce the required rock for the project and the  
 13 necessity of Nugget supplementing Spencer Rock Product's work  
 14 force and equipment. Any harm caused to Plaintiff on this  
 15 project was the result of Spencer Rock Product's duplicity in  
 16 dealing with both Plaintiff and Nugget.

17  
 18 INTERROGATORY NO. 15: Completely describe the subject  
 19 and contents of the information relevant to this case held by  
 20 each person listed on your final witness list due February 14,  
 21 2006, herein.

22 ANSWER:

23 Defendant Nugget incorporates herein its General Objections  
 24 stated above. Nugget also objects to this Interrogatory as  
 25 overbroad, unduly burdensome, cumulative, duplicative, seeking  
 attorney-client information, the information can be obtained  
 from a source that is more convenient and less expensive, and  
 Plaintiff has had ample opportunity over the last eight years to  
 obtain the information sought. Nugget has previously provided  
 witness disclosures describing the information relating to this  
 case possessed by each witness. Subsequently, Plaintiff has  
 taken the deposition of the key witnesses listed on Nugget's  
 trial witness list. For the information know to those  
 witnesses, Nugget refers Plaintiff to the deposition transcripts  
 for those witnesses. As to those individuals who work for  
 Plaintiffs that Nugget included in its final witness list,  
 Plaintiffs certainly have a better ability to ascertain what  
 those individuals know about the events surrounding this case

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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1 than Nugget does. Further, much of the information relating to  
2 this matter is contained in the documents produced by all  
3 parties in this litigation.

4 INTERROGATORY NO. 16: Specifically state the subject  
5 matter and content of the anticipated testimony of each witness  
6 listed on your final witness list due February 14, 2006, herein.

7 ANSWER:

8 Defendant Nugget incorporates herein its General Objections  
9 stated above. In addition, this Interrogatory seeks attorney-  
10 client information and work product. The information as to  
11 which each witness will testify regarding is a decision made by  
12 counsel based in his/her mental impressions of the subject  
13 matter and the legal strategies involved in trying the case. As  
14 such, they are not subject to discovery. Fed. R. Civ. Pro. 26  
15 (b)(3). In addition, as Defendant in this matter, Nugget's  
16 case-in-chief will be dictated in some degree by what Plaintiffs  
17 put forth in their case and by what issues remain after  
18 dispositive motions and motions in limine are ruled upon, which  
19 means the expected testimony of Nugget's witnesses is not yet  
20 fully ascertainable.

21 REQUEST FOR PRODUCTION NO. 11: Produce any and all  
22 unprivileged documents reflecting or otherwise relating to the  
23 information requested by Interrogatory Nos. 6 through 16  
24 propounded above.

25 ANSWER:

Defendant Nugget incorporates herein its General Objections  
stated above. Without waiving its objections, Nugget has  
previously produced all relevant, non-privileged documents to  
Plaintiffs. Thus, Nugget objects to this Request as being  
duplicative and unduly burdensome.

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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*United States ex rel. North Star, et al. v. Nugget Construction,  
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1  
2 DATED: March 20, 2006.

3 BURR, PEASE & KURTZ  
4 Attorneys for North Star

5  
6 By \_\_\_\_\_  
7 Michael W. Sewright  
8 Alaska Bar # 7510090  
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**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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ATTORNEY VERIFICATION

In accordance with Rule 33 (b) (2), I hereby verify that the foregoing objections to the requested discovery are consistent with the Federal Rules of Civil Procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.



Thomas R. Krider, WSBA #29490  
Pro Hac Vice  
Attorney for Defendant Nugget Construction, Inc.

OATH

Nugget Construction, Inc., does hereby swear, under oath, that the foregoing answers to discovery requests are true to the best of its knowledge and belief.

NUGGET CONSTRUCTION, INC.

By: 

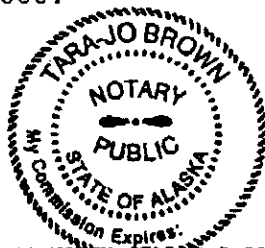
(signature)

Printed Name: JOHN W. SMITHSON

Its: PROJECT MGR  
(title)

SUBSCRIBED AND SWORN to before me this 20 day of

March, 2006.



  
NOTARY PUBLIC FOR \_\_\_\_\_

My commission expires: \_\_\_\_\_

My Commission Expires  
November 5, 2009

NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY REQUESTS TO DEFENDANT NUGGET CONSTRUCTION, INC.

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F-TRX Responses to North Star's Second Discovery Request 032006 993100002

CERTIFICATE OF SERVICE

I certify that on the 20th day  
of March 2006, a copy of the  
foregoing was served by U.S.

Mail on:

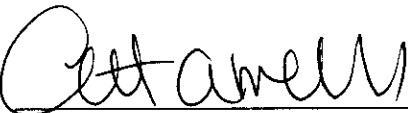
Michael W. Sewright  
BURR PEASE & KURTZ  
810 "N" Street  
Anchorage, AK 99501

Steven J. Shamburek, Esq.  
425 G Street, Suite 630  
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C. Patrick Stoll, Esq.  
HERRIG VOGT & STOLL LLP  
4210 Douglas Blvd., Ste. 100  
Granite Bay, CA 95746-5902

Paul D. Stockler, Esq.  
1309 W. 16th Ave  
Anchorage, AK 99501

Herbert A. Viergutz, Esq.  
Barokas Martin & Tomlinson  
1029 W. 3<sup>rd</sup> Ave., Suite 280  
Anchorage, AK 99501



Catherine A. Melland

**NUGGET'S RESPONSES TO NORTH STAR'S SECOND SET OF DISCOVERY  
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*United States ex rel. North Star, et al. v. Nugget Construction,  
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SHAMBUREK LAW OFFICE, LLC DBA  
LAW OFFICE OF  
**STEVEN J. SHAMBUREK**  
SUITE 630  
425 G STREET  
ANCHORAGE, ALASKA 99501

NO DOCKET DATE *wef*  
DOCKETED

DIRECT: (907) 522-5339  
CELL PHONE: (907) 250-0044

ANCHORAGE, ALASKA 99501

FACSIMILE: (907) 522-5393

[shamburek@gci.net](mailto:shamburek@gci.net)  
[www.shamburek.com](http://www.shamburek.com)

**RECEIVED**

**APR 06 2006**

**BURR, PEASE & KURTZ**

April 4, 2006

Mr. Herbert A. Viergutz, Esq.  
Barokas Martin & Tomlinson  
1029 W. 3rd Avenue, Suite 280  
Anchorage, Alaska 99501

Dear Herb:

North Star's recent discovery requests ask USF&G at Interrogatory Number 10 to "[d]escribe in full detail each factual basis which supports, or tends to support, the allegations in each of the affirmative defenses stated in your Answer and Affirmative Defenses dated September 21, 2005 to North Star's Amended Complaint." In its response dated March 14, 2006, USF&G does not state any factual basis to support any of its affirmative defenses. USF&G does not provide a factual basis to challenge the claims of bad faith maintained by the claimants or to support the statute of limitations defense advanced by USF&G. Therefore, the claimants and court can conclude that USF&G by its own responses admits that there is no factual basis underpinning its defenses.

The reference to a statute of limitations defense in your discovery responses is also unsupported by the record. When the three complaints were first filed in 1998, the claimants did not know how USF&G had handled and mishandled their claims. USF&G's treatment and mistreatment of the claims did not emerge until recently. Many of the documents were first disclosed last November, 2005. USF&G did not waive its asserted privilege and produce other documents and correspondence until January, 2006. The acts of bad faith continue to this day. The statute of limitations for torts is two years; the statute will not expire until the breaches cease.

The expert report of William Grant Callow, produced to the defendants on February 14, 2006, discusses the legal import of USF&G's activity and inactivity. The recent decision of the Ninth Circuit finds in pertinent part that there is evidence of subterfuge. Thus, USF&G has known since March, 2005 that there is evidence of subterfuge by Nugget and yet it has not fulfilled its duties. When USF&G should have investigated and seriously considered paying the claims, its records indicate that it breached and disregarded its duties. The actions and inactions

Exhibit 5  
1 of 4

continue to this day and are more egregious because USF&G now has more knowledge of Nugget's activities and misrepresentations to it. USF&G's recent statements and actions ratify and reaffirm its bad faith.

The court in Alvarez v. Insurance Co. of North America, 667 F.Supp. 689, 696 (N.D. Cal. 1987) anticipates the seminal Ninth Circuit decision in K-W Industries issued in 1988. The decision notes the applicability of 31 C.F.R. Section 223.18, among other provisions. Id. The regulation states in pertinent part: "Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee." This and other regulations establish the duties.

Nugget and USF&G have done little to resolve the case other than make a total offer of \$35,000.00 to the three claimants for the first time in June, 2005. The offer is a benchmark of bad faith, because the sum is a little more than merely the prejudgment interest on Metco's claim alone. USF&G's recent offer to settle with all three claimants for one dollar (\$1.00) in light of the findings and record to date is another act of bad faith. USF&G is on the retrograde.

The District Court found that Mr. Randolph, the signatory on both the "Material Agreement" and "Support Agreement" on behalf of Nugget, was involved with Nugget, Spencer and Trecon. The District Court found:

Other significant undisputed facts in the record show that Nugget was ideally situated to take over operations at the Spencer quarry. For five years preceding his position as Nugget's project manager, Lynn D. Randolph worked as the project manager and job estimator in the Spencer quarry under its previous owner, Trecon (for whom Nugget's general manager and corporate secretary Greg Poyner also worked as a general manager). Randolph also worked as senior engineer, bid estimator, and project manager for Spencer after Robert LaPore purchased the quarry in 1994. In fact, prior to the Homer Spit project, Randolph worked for Nugget as a consultant, bid estimator, and project manager at the same time he worked for LaPore at Spencer. According to Randolph and LaPore, most of the calculations resulting in Spencer's pricing to Nugget on the Homer Spit bid were prepared by Randolph as a bid estimator and consultant for Spencer (while he also worked as a project manager for Nugget).

(Excerpts of Record p. 334 at l. 11 - 335, l. 6 in the second appeal to the Ninth Circuit). A copy of a business card stating that Mr. Randolph works for Spencer, another one stating that he works for Nugget, and another one stating that he works for LDR have been produced in this litigation. None of the cards state any periods of employment and/or limitation on his engagement on them.

At his recent deposition, Mr. Randolph testified that for many years he has agreed to assist contractors asserting a claim or legal issue on a project only if they agree to use one of three or four attorneys he specifies. He testified that his first choice is the Oles, Morrison law firm and that he steered Nugget Construction to the law firm in 1996 to handle the bid protest related to the Homer Project. The law firm has continued to represent Nugget, and then USF&G, in this litigation. He also stated that he steers clients to you. You and your law firm entered its appearance for USF&G to defend the bad faith claims asserted against USF&G. This development is of great concern. Has USF&G obtained the independent evaluation it owes the three claimants under the payment bond and applicable laws and regulations? Do your and your firm's connections with Mr. Randolph, who is at the center of the controversy and conspiracy, taint any neutral evaluation you can provide? Is USF&G aware of that relationship and apparent conflict? Will it become aware of the them for the first time at trial or through this letter?

The USF&G files include statements by Mr. James Ferguson, USF&G's and Nugget's agent and broker, that USF&G will let Nugget take care of things. One facsimile cover sheet dated September 2, 1997 signed by Mr. Ferguson states that Spencer Rock is a "Vender" not a "Sub." That conclusion is contradicted by the applicable Supreme Court decisions in MacEvoy (1944) and F.D. Rich (1974) on the facts in this case. These two cases are discussed in the files recently produced by USF&G. (USF&G 001640 - 001646). The claimants discussed and the District Judge relied on these two Supreme Court decisions. Oles, Morrison and USF&G advanced a Ninth Circuit case, Aetna Casualty (1992), on appeal and was fortunate to draw the author of that decision, Judge T.G. Nelson, on the panel that addressed the matter. The other two members of the panel deferred to his prior decision rather than Supreme Court authority. At times in the practice of law, personal deference does trump stare decisis. The Supreme Court likely would have reversed. However, the Supreme Court very rarely accepts a petition for certiorari in a Miller Act case so that option was expensive and extremely tenuous.

USF&G has ignored another basis for liability that the claims by the claimants arise from a direct contractual relationship with Nugget. Shoreside received the same signed Credit Application from Nugget that it received from Spencer Rock Products. The District Court previously found that the Shoreside Credit Application created a direct contractual relationship and provided a contractual basis for an award of attorney's fees. Shoreside had done work for Nugget prior to April, 1997 and subsequent to the termination of work billed initially to Spencer Rock Products during the summer of 1997. This issue was briefed to but not addressed by the District Court in 1999. North Star also claims a direct contractual relationship with Nugget which was discussed in recent depositions.

Mr. Ferguson expressed surprise at his deposition on March 8 with the allegations in North Star's Amended Complaint filed last



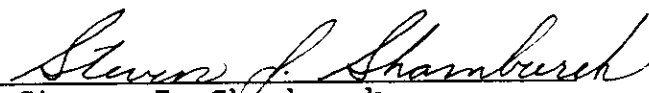
year. He stated that he was not aware of the allegations until the previous weekend. He had not investigated the allegations at the time but suggested that he would review them. He was provided copies, through counsel, of the Shoreside and Metco Amended Complaints on March 9. Mr. Ferguson was asked about the detailed letter from Mr. J. Dennis Stacey with Chugach Rock Corporation to Ms. Jane Bennett Poling with USF&G dated March 18, 1998 that explicated Nugget's fraudulent conduct and efforts to take over the Spencer Quarry. USF&G was aware of the fraud and subterfuge and still refused to undertake or fulfill its duties.

Claimants already proved their contract-based damages and were awarded judgment for those damages by the court in 1999. In reaching this conclusion, the District Court also found that the goods were provided and the services performed for the use and benefit of the Homer Project. These findings and others were not challenged on appeal. Any challenge has been waived. Kesselring v. F/T Arctic Hero, 95 F.3d 23, 24-25 (9th Cir. 1996). On this basis, USF&G should have paid the three claims with some interest at a minimum back in 1999 if not earlier.

You threaten to bring a motion for attorney's fees. The claimants can also bring a motion for attorney's fees. Your statements in letters and discovery responses appear to be written for client consumption. The "macho man" stuff may not play well in Federal Court which requires more decorum and propriety.

If you have any questions or a serious desire to resolve this matter on behalf of your client, please contact me or Mr. Sewright. Thank you for your attention to this matter. Best wishes.

THE LAW OFFICE OF STEVEN J. SHAMBUREK

By:   
Steven J. Shamburek

CC: Michael W. Sewright, Esq.  
Thomas R. Krider, Esq.  
Douglas R. Davis, Esq.



LAW OFFICE

## BAROKAS MARTIN &amp; TOMLINSON

LARRY L. BAROKAS, P.S.  
DALE R. MARTIN, P.S.  
JOHN R. TOMLINSON, JR.  
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MICHAEL A. GALLECH  
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1029 West Third, Suite 280  
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BARMAR @ GCI.NET

RESIDENT COUNSEL, ALASKA OFFICE  
HERBERT A. VIERGUTZ

April 10, 2006

Via Facsimile No. 277-9883

Steven J. Shamburek, Esq.  
Law Office of Steven J. Shamburek  
425 G Street, Suite 630  
Anchorage, AK 99501-5872

Re: North Star v. Nugget Construction, et.al.

Dear Mr. Shamburek:

Your letter dated April 4, 2006, strikes me as one that could well have been drafted for presentation in a film with its subject being paranoia. Your letter is unworthy of a response but will be addressed under the Court Order through the filing of appropriate Motion practice.

Sincerely,



Herbert A. Viergutz

HAV/sbj

**Subject:** Noncompliance

**From:** "Michael W. Sewright" <mws@bpk.com>

**Date:** Thu, 27 Apr 2006 13:08:08 -0800

**To:** Herbert Viergutz <barmar@gci.net>, Tom Krider <Krider@OLES.com>

**CC:** Steve Shamburek <shamburek@gci.net>

With the deadline for motions looming, I am wondering if your clients will be providing complete responsive disclosures to my client's second set of discovery requests propounded on February 14, 2006, as required by Federal Civil Rules 26 and 37. Please let me know and provide the disclosures before the deadline grows much closer. Among other things, I am concerned about Nugget's failure to give sufficient factual bases for several of the affirmative defenses it is still making and, even more, USF&G's failure to provide any factual basis for defenses. USF&G's only response on that point was dated March 16 and received March 17 from Mr. Viergutz. That response chiefly referenced a forthcoming Response to a similar discovery request propounded to Nugget, through the Oles Morrison law firm which also represents USF&G. In Mr. Viergutz's response USF&G also simply denied it committed bad faith and alleged that the "Statute of Limitations" expired on the claims asserted "by Plaintiff against Defendant" before the Amended Complaint. Nugget's eventual Response through Oles Morrison, which was expressly made only on behalf of Nugget and dated March 20 and received March 22, did not state any factual basis for any defense asserted as to USF&G. Therefore, we are left with no factual bases being provided.

Please consider this our meet and confer under the federal rules on this matter, if I do not hear from you as requested.

Thank you.

M. Sewright

--

Michael W. Sewright  
Burr, Pease & Kurtz  
810 N Street, Anchorage AK 99501  
(907) 276-6100  
<http://www.bpk.com>

\*\*\*\*\*  
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\*\*\*\*\*

Exhibit 7  
/ of /